IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-21-12-2004

Coram:-
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice AR. RAMALINGAM

Writ Appeal Nos. 202 and 203 of 2000

The Management of
Thanthai Periyar Transport
Corporation Ltd.,
Represented by its Managing Director,
Villupuram.

.. Appellant/in
both appeals.

Vs.

1. R. Jagadeesan,
   C/o. C.I.T.U., Union Office,
   Palakarai, Lawrence Road,
   Cuddalore-2.

2. Presiding Officer,
   III Additional Labour Court,
   City Civil Court Buildings,
   Madras-104.

..Respondents in
W.A.No. 202/2000.

1. K. Chandrasekaran,
   C/o. C.I.T.U. Union Office,
   Palakarai, Lawrence Road,
   Cuddalore-2.

2. Presiding Officer,
   III Additional Labour Court,
   City Civil Court Buildings,
   Madras-104.

..Respondents in
W.A.No. 203/2000.

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Writ Appeals filed under Clause 15 of Letters Patent against Common Order dated 28-9-99 made in Writ Petition Nos. 15988 and 15989 of 90.

Mr. T. Arul Raj:- For appellant in both appeals.

Mr. D. Hariparanthaman:- For 1st respondent
In both appeals.

COMMON JUDGEMENT

(Judgement of the Court was delivered by P. Sathasivam, J.,)

The Management of Thanthai Periyar Transport Corporation Limited is the appellant in the above appeals. The appeals have been filed against the common order of the learned Single Judge dated 28-9-1999 made in Writ Petition Nos. 15988/90 and 15989/90 in and by which the learned Judge confirmed the order of the Labour Court, granting over time allowance/wages.

2. Writ Appeal No. 202/2000 relates to Claim Petition No. 810/87 filed by a Mechanic granting over time allowance of Rs.660-44 for 79 hours at the rate of (4.18 x 2) i.e., Rs.8.36 per hour for having worked for 119 hours in five days when he was at the disposal of the employer and in charge of the transport of the vehicle bearing Registration No. TML 8393 from 4 A.M. on 6-1-1987 till 3 A.M. on 11-1-1987 for an outstation tourist trip between Cuddalore and Sabarimalai.

2. Writ Appeal No. 203/2000 relates to Claim Petition No. 809/87 filed by a Driver, awarding over time allowance of Rs.897.15 for 125.30 hours at the rate of (3.58 x 2) i.e., Rs.7.16 per hour for having worked for 189.30 hours in eight days when he was at the disposal of the employer and was in charge of the transport of the vehicle bearing Registration No. TMS 8513 from 4.00 A.M. on 3-1-1987 till 12.30 P.M. on 10-1-1987 for an outstation tourist trip between Cuddalore and Sabarimalai. The time and date, registration number of the vehicle and number of days/hours worked are not disputed.

3. The III Additional Labour Court, Chennai-104, after considering the fact that both the workmen were available at the disposal of the employer i.e., Thanthai Periyar Transport Corporation during the total number of hours i.e., 119 hours in

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Claim Petition No. 810/87 (filed by mechanic) and 189.30 hours in Claim Petition No.809/87 (filed by the driver) after deducting the hours of work of each day prescribed under Section 13 of the Motor Transport Workers' Act, 1961 (hereinafter referred to as "the Act") i.e., 8 hours a day arrived a conclusion that both of them are entitled for over time allowance for 79 and 125.30 hours respectively and awarded a sum of Rs.660-44 and Rs.897-15 respectively. Aggrieved by the said order, the Management of the Thanthai Periyar Transport Corporation filed Writ Petition Nos. 15988 and 15989 of 1990 before this Court. The learned Single Judge, after adverting to various provisions of the Act and Tamil Nadu Motor Transport Workers' Rules, 1965 (hereinafter referred to as "the Rules"), accepted the claim of the workmen and by the impugned order, confirmed the award of the Labour Court and dismissed both the writ petitions. Questioning the same, the present appeals have been filed by the Management.

4. Heard learned counsel for the appellant as well as first respondent/workmen.

5. The only point for consideration in these appeals is, whether in the facts and materials placed, the workmen, namely, mechanic and driver respectively are entitled to over time wages/allowance and the Labour Court as well as the learned Single Judge are right in granting the same?

6. Though a faint argument was advanced that the provisions of the Act and the Rules referred to above are not applicable, that they are governed only under Factories Act and that their claim is not maintainable in view of Section 2 (f), 13, 15, 26 of the Act and Rule 26 of the Rules and relied on by the Management before the Labour Court and the learned Single Judge, the said contention is liable to be rejected and on going through those provisions, we hold that they are applicable to both the workmen. Inasmuch as the learned Judge referred to the above provisions in the order which is under challenge, there is no need for us to refer the same once again. The definition under Section 2 (f) and Section 13 speak about hours of work; Section 15 speaks about daily intervals for rest; Section 26 refers to extra wages for over time and Rule 26 of the Rules refers to extra hour of work. It is not in dispute that both the workmen were engaged for outstation festival trip i.e., between Cuddalore and Sabarimalai within the ambit of Sections 13 and 15 (2) of the Act. As rightly concluded by the Labour Court and pointed out by the learned Judge, there is nothing on record to show that the employer had terminated the duty of the workers on the expiry of either 8 hours of minimum duty or 10 hours of maximum duty as provided under Sections 13

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and 15 of the Act or anything on record that the employer has given particular roaster for engaging these employees. On the other hand, admittedly, both of them had been at the disposal of the employer for 119 hours and 189.30 hours respectively. As rightly observed by the learned Judge, in the absence of any proof that they are respective work or roaster terminating their work, it is presumed that both of them were engaged throughout by the employer and available for service. Except disputing the claim of the workmen, admittedly, the management has not produced any material regarding cessation of work after 8 hours either before the Labour Court or before the learned Single Judge. Even before us, the very same contention was raised without any material. In such a circumstance, in the light of the statutory provisions referred to above, and the factual assertion made by the workmen concerned, as accepted by the Labour Court and the learned Single Judge, we hold that both of them are entitled for the benefit of extra wage for over time as per Section 26 of the Act and Rule 26 of the Rules.

7. Learned counsel appearing for the appellant by relying on a Division Bench judgement of the Madhya Pradesh High Court in Gurusharan Singh v. Rewa Transport Services, reported in 1968 I LLJ 143, would contend that the workers cannot be employed for hours in excess of hours fixed under Section 13 of the Act since the over time work done in excess would be in violation of the Act and the claim based on such violation cannot be maintained. On going through the said decision and of the fact that the said decision was based on Madhya Pradesh Minimum Wages Fixation Act and the present cases are governed by the Motor Transport Workers Act, in the light of the provisions in the Motor Transport Workers Act and the Tamil Nadu Motor Transport Workers Rules, we are of the view that the said decision is not applicable to the cases on hand.

8. In Government Transport Service, Bombay v. S.L. Mishra and others, reported in 1996-III-L.L.J.670, the Bombay High Court considering similar claim made by the workman, namely, drivers in the Government Transport Service, Bombay, ultimately accepted their case and found that they were entitled to over time payment as per Motor Transport Workers Act, 1961.

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9. In T.T.Corporation v. K.P. Rangaswamy, reported in 1994- I -L.L.N. 821, a learned Judge of this Court, after considering Sections 19 (2), 20 and 26 of the Act and Rule 26 of the Rules has held : (para 6)

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> "6. A careful reading of the above provisions will show that simply because compensatory day of rest is allowed as per S.20 of the Act, that will not disable the worker from seeking extra wages as per S.26 of the Act."

We are in agreement with the said conclusion.

10. In the light of the factual details that both the workmen, namely, mechanic and driver worked more than the statutory period of hours and in the absence of any other material from the management that their services were not utilized after 8 hours, we agree with the conclusion of the learned Judge confirming the award of the Labour Court. Though an argument was advanced that there is a circular giving the benefit only to daily allowance and traveling allowance and it does not speak about the over time allowance, in the light of the statutory provision, namely, Section 26 of the Act and Rule 26 of the Rules, as rightly argued by the learned counsel for the workmen, the circular cannot over-ride the statutory provision. This aspect was considered by the learned Judge and rightly rejected. We are in agreement with the conclusion of the learned Judge and we do not find any valid ground for interference.

11. Under these circumstances, both the Writ Appeals fail and they are dismissed as devoid of merit. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

R.B.

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To:-

The Presiding Officer,

The III Addl. Labour Court, Madras-104.

1 cc to Mr. T. Arulraj, Advocate, SR. 56588

1 cc to Mr. D. Hariparanthaman, Advocate, Sr. 56333

Common Judgement in

Writ Appeal Nos.202 and 203

Of 2000.

JRG (CO)

kk 31.12.04

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